

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *2013-882*

11 **BARBARA MCPHERSON, AKA**
12 **BARBARA ANN MCPHERSON, AKA**
13 **BARBARA ANN COTTON**
14 **3149 Casa De Campo, #F113**
San Mateo, CA 94403

ACCUSATION

15 **32402 Village Green Blvd.**
Warrenville, IL 60555

16 **Registered Nursing License No. 772827**

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about April 27, 2010, the Board of Registered Nursing issued Registered
25 Nursing License Number 772827 to Barbara McPherson, AKA Barbara Ann Mcpherson, AKA
26 Barbara Ann Cotton (Respondent). The Registered Nursing License expired on May 31, 2012,
27 and has not been renewed.

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

6. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

7. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

..."

8. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

1 "(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
2 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
3 administer to another, any controlled substance as defined in Division 10 (commencing with
4 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
5 defined in Section 4022.

6 "(b) Use any controlled substance as defined in Division 10 (commencing with Section
7 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
8 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
9 himself or herself, any other person, or the public or to the extent that such use impairs his or her
10 ability to conduct with safety to the public the practice authorized by his or her license.

11 "(c) Be convicted of a criminal offense involving the prescription, consumption, or
12 self-administration of any of the substances described in subdivisions (a) and (b) of this section,
13 or the possession of, or falsification of a record pertaining to, the substances described in
14 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
15 thereof.

16 "(d) Be committed or confined by a court of competent jurisdiction for intemperate use of
17 or addiction to the use of any of the substances described in subdivisions (a) and (b) of this
18 section, in which event the court order of commitment or confinement is prima facie evidence of
19 such commitment or confinement.

20 "(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any
21 hospital, patient, or other record pertaining to the substances described in subdivision (a) of this
22 section."

23 9. Section 2765 of the Code states:

24 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
25 charge substantially related to the qualifications, functions and duties of a registered nurse is
26 deemed to be a conviction within the meaning of this article. The board may order the license or
27 certificate suspended or revoked, or may decline to issue a license or certificate, when the time
28 for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an

1 order granting probation is made suspending the imposition of sentence, irrespective of a
2 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person
3 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict
4 of guilty, or dismissing the accusation, information or indictment."

5 10. Section 490 of the Code provides, in pertinent part, that a board may suspend or
6 revoke a license on the ground that the licensee has been convicted of a crime substantially
7 related to the qualifications, functions, or duties of the business or profession for which the
8 license was issued.

9 11. Code section 4060 provides, in pertinent part, that no person shall possess any
10 controlled substance, except that furnished upon a valid prescription/drug order.

11 12. Health and Safety Code section 11170 provides that no person shall prescribe,
12 administer, or furnish a controlled substance for himself or herself.

13 13. Health and Safety Code section 11173(a) states, in pertinent part, that no person shall
14 obtain or attempt to obtain controlled substances, or procure or attempt to procure the
15 administration of or prescription for controlled substances by fraud, deceit, misrepresentation or
16 subterfuge.

17 14. Health and Safety Code section 11377, in pertinent part, makes it unlawful to possess
18 any controlled substance in Schedule II, subdivision (d), without a prescription.

19 15. Health and Safety Code section 11550, in pertinent part, makes it unlawful for any
20 person to use or be under the influence of any controlled substance in Schedule II (Health and
21 Safety Code section 11055), subdivision (d)(1) or (d)(2), or any narcotic drug in Schedules III-V,
22 except when administered by or under the direction of an authorized licensee.

23 COST RECOVERY

24 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
25 administrative law judge to direct a licentiate found to have committed a violation or violations of
26 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
27 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
28

1 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
2 included in a stipulated settlement.

3 DRUGS

4 17. Vicodin is a brand of hydrocodone bitartrate which is a combination of
5 acetaminophen and hydrocodone, a Schedule II controlled substance as designated by Health and
6 Safety Code section 11055(b)(1)(I) and is a dangerous drug per Code section 4022, used for
7 moderate to severe pain relief.

8 FIRST CAUSE FOR DISCIPLINE

9 (CRIMINAL CONVICTION)

10 18. Respondent is subject to disciplinary action under sections 2761(a), 2761(f), 2762(c),
11 and/or 490 in that on or about August 24, 2011, in a criminal proceeding entitled *The People of*
12 *the State of California v. Barbara McPherson* in San Mateo County Superior Court, Case Number
13 NF402235A, Respondent was convicted by her plea of guilty of violating Penal Code
14 section 504/484 (theft – count 2). Respondent was sentenced to 10 days jail time and probation
15 for 18 months, and ordered to pay fines and fees in the amount of \$300.00. The circumstances of
16 the conviction are that Respondent stole Vicodin from San Mateo Medical Center as alleged in
17 paragraphs 20 to 23 below. As to count 1 (violation of Health and Safety Code section 11350(a),
18 unlawful possession of controlled substances), on August 24, 2011, the Court granted deferred
19 entry of judgment so that Respondent could complete a drug program. On April 11, 2012,
20 diversion as to count 1 was revoked and terminated, and a bench warrant was issued for a
21 probation violation.

22 SECOND CAUSE FOR DISCIPLINE

23 (ILLEGALLY OBTAIN OR POSSESS CONTROLLED SUBSTANCES)

24 19. Respondent is subject to disciplinary action under Code sections 2762(a) and 4060,
25 Health and Safety Code section 11377 and Health and Safety Code section 11173(a), in that while
26 on duty as a registered nurse at San Mateo Medical Center in San Mateo, California, Respondent
27 illegally obtained and/or possessed controlled substances as follows:
28

20. Patient A: On January 24, 2011 at 18:05, Patient A's physician ordered "Vicodin tabs ii po x 1 now.¹" On January 24, 2011 at 17:37, Respondent removed two tablets of Hydrocodone/APAP (5 mg/500 mg) (generic for Vicodin) from the hospital Pyxis². Respondent documented administration of two tablets of Hydrocodone/APAP (5 mg/500 mg) at 18:45. On January 24, 2011 at 21:46, Respondent removed two additional tablets of Hydrocodone/APAP (5 mg/500 mg) from the Pyxis, but failed to document administration or otherwise account for the medication. Other than the physician's order given at 18:05, there were no orders for Hydrocodone/APAP (5 mg/500 mg) for Patient A.

21. Patient B: On January 29, 2011 at 20:12, Respondent removed two tablets of Hydrocodone/APAP (5 mg/500 mg) from the hospital Pyxis, without a physician's order. Respondent failed to document administration or otherwise account for the medication.

22. Patient C: On January 30, 2011 at 17:37, Respondent removed two tablets of Hydrocodone/APAP (5 mg/500 mg) from the hospital Pyxis, without a physician's order. Respondent failed to document administration or otherwise account for the medication.

23. Patient D: On February 2, 2011 at 19:14, Respondent removed two tablets of Hydrocodone/APAP (5 mg/500 mg) from the hospital Pyxis, using the name of another nurse who was not working that day.

THIRD CAUSE FOR DISCIPLINE

(UNINTELLIGIBLE ENTRIES IN PATIENT RECORDS)

24. Respondent is subject to disciplinary action under Code section 2762(e), in that while on duty as a registered nurse at San Mateo Medical Center in San Mateo, California, Respondent falsified, made grossly incorrect, grossly inconsistent, or unintelligible entries in hospital and patient records, as alleged above in paragraphs 20 to 23.

///

///

///

¹ A one time order for two tablets.

² Pyxis is a computerized hospital medication dispensing system.

1 FOURTH CAUSE FOR DISCIPLINE
2 (ILLEGAL USE OF CONTROLLED SUBSTANCES)

3 25. Respondent is subject to disciplinary action under section 2762(b), Health and Safety
4 Code section 11550 and Health and Safety Code section 11170 in that she diverted and used
5 narcotics to an extent dangerous to herself or others. Respondent diverted Vicodin as alleged
6 above in paragraphs 20 to 23. On April 11, 2011, when confronted by a San Mateo County
7 Inspector, Respondent admitted to taking Vicodin from the hospital for her own use.

8 FIFTH CAUSE FOR DISCIPLINE
9 (UNPROFESSIONAL CONDUCT)

10 26. Respondent is subject to disciplinary action under section 2761(a) in that she acted
11 unprofessionally as alleged above in paragraphs 20 to 23.

12 PRAYER

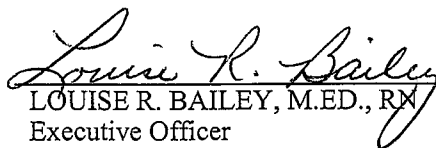
13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Registered Nursing issue a decision:

15 1. Revoking or suspending Registered Nursing License Number 772827, issued to
16 Barbara McPherson, AKA Barbara Ann Mcpherson, AKA Barbara Ann Cotton;

17 2. Ordering Barbara McPherson, AKA Barbara Ann Mcpherson, AKA Barbara Ann
18 Cotton to pay the Board of Registered Nursing the reasonable costs of the investigation and
19 enforcement of this case, pursuant to Business and Professions Code section 125.3;

20 3. Taking such other and further action as deemed necessary and proper.
21
22

23 DATED: APRIL 8, 2013

24 
25 LOUISE R. BAILEY, M.ED., RN
26 Executive Officer
27 Board of Registered Nursing
28 Department of Consumer Affairs
State of California
Complainant

SF2013109211

40662014.doc

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28